

prohibited under section 6695(f) and paragraph (f)(1) of this section.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 9436, 73 FR 78447, Dec. 22, 2008, as amended at 74 FR 5104, Jan. 29, 2009]

§ 1.6695-2 Tax return preparer due diligence requirements for determining earned income credit eligibility.

(a) *Penalty for failure to meet due diligence requirements.* A person who is a signing tax return preparer of a tax return or claim for refund under the Internal Revenue Code with respect to determining the eligibility for, or the amount of, the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty of \$100 for each such failure.

(b) *Due diligence requirements.* A preparer must satisfy the following due diligence requirements:

(1) *Completion of eligibility checklist.* (i) The preparer must either—

(A) Complete Form 8867, “Paid Preparer’s Earned Income Credit Checklist,” or such other form and such other information as may be prescribed by the Internal Revenue Service (IRS) (Eligibility Checklist); or

(B) Otherwise record in the preparer’s paper or electronic files the information necessary to complete the Eligibility Checklist (Alternative Eligibility Record). The Alternative Eligibility Record may consist of one or more documents containing the required information.

(ii) The preparer’s completion of the Eligibility Checklist or Alternative Eligibility Record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer.

(2) *Computation of credit.* (i) The preparer must either—

(A) Complete the Earned Income Credit Worksheet in the Form 1040 instructions or such other form and such other information as may be prescribed by the IRS (Computation Worksheet); or

(B) Otherwise record in the preparer’s paper or electronic files the preparer’s EIC computation, including the method and information used to make the computation (Alternative Computation Record). The Alternative Computation Record may consist of one or more documents containing the required information.

(ii) The preparer’s completion of the Computation Worksheet or Alternative Computation Record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer.

(3) *Knowledge—*(i) *In general.* The tax return preparer must not know, or have reason to know, that any information used by the tax return preparer in determining the taxpayer’s eligibility for, or the amount of, the EIC is incorrect. The tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. A tax return preparer must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude that the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. The tax return preparer must also contemporaneously document in the files the reasonable inquiries made and the responses to these inquiries.

(ii) *Examples.* The provisions of paragraph (b)(3)(i) of this section are illustrated by the following examples:

Example 1. A 22 year-old taxpayer wants to claim two sons, ages 10 and 11, as qualifying children for purposes of the EIC. Preparer A must make additional reasonable inquiries regarding the relationship between the taxpayer and the children as the age of the taxpayer appears inconsistent with the ages of the children claimed as sons.

Example 2. An 18 year-old female taxpayer with an infant has \$3,000 in earned income and states that she lives with her parents. Taxpayer wants to claim the infant as a qualifying child for the EIC. This information appears incomplete and inconsistent because the taxpayer lives with her parents and earns very little income. Preparer B must make additional reasonable inquiries to determine if the taxpayer is the qualifying

child of her parents and, therefore, ineligible to claim the EIC.

Example 3. Taxpayer asks Preparer C to prepare his tax return and wants to claim his niece and nephew as qualifying children for the EIC. Preparer C should make reasonable inquiries to determine whether the children meet EIC qualifying child requirements and ensure possible duplicate claim situations involving the parents or other relatives are properly considered.

Example 4. Taxpayer asks Preparer D to prepare her tax return and tells D that she has a Schedule C business, that she has two qualifying children and that she wants to claim the EIC. Taxpayer indicates that she earned \$10,000 from her Schedule C business, but that she has no expenses. This information appears incomplete because it is very unlikely that someone who is self-employed has no business expenses. D must make additional reasonable inquiries regarding taxpayer's business to determine whether the information regarding both income and expenses is correct.

(4) *Retention of records.* (i) The preparer must retain—

(A) A copy of the completed Eligibility Checklist or Alternative Eligibility Record;

(B) A copy of the Computation Worksheet or Alternative Computation Record; and

(C) A record of how and when the information used to complete the Eligibility Checklist or Alternative Eligibility Record and the Computation Worksheet or Alternative Computation Record was obtained by the preparer, including the identity of any person furnishing the information.

(ii) The items in paragraph (b)(4)(i) of this section must be retained for three years after the June 30th following the date the return or claim for refund was presented to the taxpayer for signature, and may be retained on paper or electronically in the manner prescribed in applicable regulations, revenue rulings, revenue procedures, or other appropriate guidance (see § 601.601(d)(2) of this chapter).

(c) *Exception to penalty.* The section 6695(g) penalty will not be applied with respect to a particular tax return or claim for refund if the tax return preparer can demonstrate to the satisfaction of the Internal Revenue Service that, considering all the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to

ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular return or claim for refund was isolated and inadvertent.

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 8905, 65 FR 61269, Oct. 17, 2000, as amended by T.D. 9436, 73 FR 78448, Dec. 22, 2008]

§ 1.6696-1 Claims for credit or refund by tax return preparers or appraisers.

(a) *Notice and demand.* (1) The Internal Revenue Service (IRS) shall issue to each tax return preparer or appraiser one or more statements of notice and demand for payment for all penalties assessed against the tax return preparer or appraiser under section 6694 and § 1.6694-1, under section 6695 and § 1.6695-1, or under section 6695A (and any subsequently issued regulations).

(2) For the definition of the term "tax return preparer", see section 7701(a)(36) and § 301.7701-15 of this chapter. A person who prepares a claim for credit or refund under this section for another person, however, is not, with respect to that preparation, a tax return preparer as defined in section 7701(a)(36) and § 301.7701-15 of this chapter.

(b) *Claim filed by tax return preparer or appraiser.* A claim for credit or refund of a penalty (or penalties) assessed against a tax return preparer or appraiser under section 6694 and § 1.6694-1, under section 6695 and § 1.6695-1, or under section 6695A (and any subsequently issued regulations) may be filed under this section only by the tax return preparer or the appraiser (or the tax return preparer's or appraiser's estate) against whom the penalty (or penalties) is assessed and not by, for example, the tax return preparer's or appraiser's employer. This paragraph (b) is not intended, however, to impose any restrictions on the preparation of this claim for credit or refund. The claim may be prepared by the tax return preparer's or appraiser's employer